

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

MATTHEW TOBIN,)
)
Plaintiff,)
)
v.) Case No. 2:12-CV-00274
)
BEER CAPITOL DISTRIBUTING, INC.,)
ALDO MADIGRANO,)
RONALD FOWLER,)
and MICHAEL MERRIMAN)
)
Defendants.)

DECLARATION OF KEN ZEMAN

I, Ken Zeman, pursuant to 28 U.S.C. § 1746, state as follows:

1. My name is Ken Zeman. I have been employed by Beer Capitol Distributing, Inc. ("Beer Capitol") for approximately twenty-eight (28) years.
2. I make this affidavit based on my personal knowledge of this case and in support of the Defendants' Brief in Opposition to the Plaintiff's Motion for Conditional Certification.
3. I am employed by Beer Capitol as Off-Premise Director. This position requires, among other things, setting goals for sales.
4. Merchandisers do not set policy with respect to employment with Beer Capitol. Merchandisers do not have access to Company payroll records and do not have any role in setting the compensation for any Beer Capitol employee.

5. Beer Capitol merchandisers are part of the Company's Sales Department. They are grouped in two very specific categories – merchandisers who perform services at "chain" stores (such as Pick 'n' Save grocery stores), and those who perform services at independent liquor stores.

6. While all merchandisers will perform some of the same duties, such as placing signs on store displays or rotating the stock to ensure that the "oldest" beer is sold first, there are significant differences between the "chain" and "independent" merchandisers. In fact, these jobs are so varied that the overall difference between them is like night and day.

7. Merchandisers who are assigned to "chain" stores are primarily responsible for moving and organizing various quantities of beer (cases, twelve-packs, etc.). In any given day, it is common for "chain" merchandisers to move hundreds of cases of beer.

8. In this respect, "chain" merchandisers are primarily responsible for putting away the beer that has been delivered to a store. They are required to adhere to specific store policies regarding the location of Beer Capitol's brands in store coolers and on store shelves. "Chain" merchandisers have no discretion to change a store's floor plan and may not deviate from the areas that are assigned to Beer Capitol's brands.

9. Alternatively, "independent" merchandisers have more freedom and discretion to build creative product displays.

10. "Independent" merchandisers must have an eye for sales, as they are expected to identify opportunities where store displays can be expanded and Beer

Capitol's brands can be displayed more prominently than those of competitors. "Independent" merchandisers are expected to make suggestions to store owners and managers that will ultimately increase the amount of shelf or floor space that is reserved for Beer Capitol's brands.

11. Both "chain" and independent merchandisers focus their efforts toward product presentation.

Executed this 17th day of May, 2012.

s/ Ken Zeman
Ken Zeman